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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/752,015

Filing Date: December 29, 2000

Appellant(s): PERTHOU, PETER

Charles Hieken
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 11/25/08 and correction filed 12/31/08
appealing from the Office action mailed 8/18/08.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

WITHDRAWN REJECTIONS

The following grounds of rejection are not presented for review on appeal because they have been withdrawn by the examiner. The double patenting rejection of claims 3 and 5 has been withdrawn upon further review of applicant's amendment of 7/7/08.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

D435,720	PERTHOU	01-2001
5,069,050	CHEN	12-1991
4,903,514	JUNG	02-1990
4,523,443	MOMEMERS	06-1985
1,704,137	MILLER	03-1929

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

1. Claims 1,6,11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chen 5,069,050 in view of Jung 4,903,514, and Momemers 4,523,443. Chen discloses a separable key holder comprising a pair of elongated, preferably flexible and rectangular straps (16, 18), most of one surface of each strap having thereon a patch of hook and loop fastening material (20 or 22) for releasable attachment to the comparable hook and loop fastening material of the other strap (col. 3, 11. 19-25, 35-39). An end of each strap is free of hook and loop fastening material, passes through a circular key holding element (12 or 14), and is folded back upon itself and sealed to itself, preferably by heat sealing, so as to hold the key holding element in looping engagement with the strap (col. 3, 11. 41-54; figs. 1, 2).

Jung discloses a combined nail clipper and key holder comprising an elongated nail clipper container (11), a triangular-shaped connecting member (14), one side of which has a gap in its central portion with a prong on each side of the gap that extends into nail clipper container 11 for fastening connecting member 14 to nail clipper container 11, and a key ring (15) in looping engagement with connecting member 14 (col. 2, 11. 18-22, 45-50; figs. 1, 3).

Momemers discloses a key keeper comprising a D-shaped loop (3) having a U-shaped portion and, between the ends of the U-shaped portion, a bar having a gap (17) therein for receipt of keys onto loop 3 (abstract; col. 2, 11. 39-41; fig. 1). On each side of the gap is a leg (15 or 16) that projects into a cavity in a loop holder (2) (col. 3, 11. 44-47; fig. 1).

The Appellant questions the desirability of combining the references to arrive at the claimed invention (Br. 4-7; Reply Br. 2-3).

As stated by the Supreme Court in *KSR Int'l Co. v. Teleflex Inc.*, 127 S.Ct. 1727, 1740-41 :

Often, it will be necessary for a court to look to interrelated teachings of multiple patents; the effects of demands known to the design community or present in the marketplace; and the background knowledge possessed by a person having ordinary skill in the art, all in order to determine whether there was an apparent reason to combine the known elements in the fashion claimed by the patent at issue.

Chen's key holding elements 12 and 14 are attached directly to straps 16 and 18 without an intervening ring (figs. 1, 2). However, Jung's disclosure of connecting member 14 (col. 2, 11. 45-47) would have led one of ordinary skill in the art, through no more than ordinary creativity, to use an intervening ring in Chen's key holder to provide the readily apparent benefits of rendering the key holding element attachment releasable and permitting multiple key holding elements to be attached to each strap. See *KSR*, 127 S.Ct. at 1741 (In making the obviousness determination one "can take account of the inferences and creative steps that a person of ordinary skill in the art would employ").

Jung's connecting member 14 is not D-shaped. However, Jung does not set forth any significance of the shape of connecting member 14, other than indicating that it must have a bar comprising inwardly extending prongs with a gap therebetween for attaching connecting member 14 to clipper container 11 (figs. 1, 3). Hence, one of ordinary skill in the art would have been led, through no more than ordinary creativity, to use other shapes that provide inwardly extending prongs, such as Momemers's D-shaped loop 3 (fig. 1).

Although Momemers's loop 3 is a key-retaining loop rather than a connecting member (abstract), one of ordinary skill in the art would have appreciated that the gap in Momemers's loop that is suitable for receiving keys (col. 3, 1.42) also would be suitable for receiving a key ring. As stated by the Supreme Court in *KSR*, 127 S.Ct. at 1740, "if a technique has been used to improve one device, and a person of ordinary skill in the art would recognize that it would

improve similar devices in the same way, using the technique is obvious unless its actual application is beyond his or her skill."

Regarding claim 11, Chen's key-holding elements 12 and 14 are attached to straps 16 and 18 preferably by heat sealing, and alternatively by stitching (col. 3, 11. 50-53), not by passing the ends of straps 16 and 18 through a gap in key-holding elements 12 and 14. However, one of ordinary skill in the art would have been led, through no more than ordinary creativity, by Momemers's disclosures that key-retaining loop 3 has a bar with a gap (abstract; fig. 1) and that keys can be inserted through the gap (abstract; col. 3, 1. 42; fig.1), to attach Chen's straps 16 and 18 through a gap so that straps 16 and 18 can be releasably attached to the D-ring of the combined disclosures of Chen, Jung and Momemers, and so that the loops at the ends of the straps can be formed in advance by heat sealing or stitching and later attached to key-holding elements 12 and 14.

2. Claims 2,4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chen in view of Jung and Momemers, as applied to claim 1 above, and further in view of Miller 1,704,137. Miller discloses a key holder comprising a strip of material, preferably leather, that is folded over at an end to form a loop through which a key chain passes, is closed by stitching (16) at the other end, and has one snap fastener (28) at each of its side edges intermediate the fold and stitching 16 to fasten together the side edges (p. 1, 11. 32-57; fig. 3).

The Appellant argues that the applied references do not suggest the desirability of the limitations in the Appellant's claims 2, 4, 7 and 9 (Br. 9).

Regarding claim 2, Chen discloses a web (straps 16, 18) looped through key-holding elements 12 and 14 (col. 3, 11. 19-25; figs. 1, 2). Attaching a D-ring to straps 16 and 18 would have been obvious to one of ordinary skill in the art for the reasons given above regarding the rejection of claims 1, 6 and 11. Like the Appellant's D-ring, that D-ring would have the ability to rotate through an angle of nearly 360 degrees and would permit rotation of a key-holding ring looped with it to ride along the inside of its U-shaped inside portion for substantially 180 degrees as required by the Appellant's claim 4.

With respect to the requirement of claims 7 and 9 that the key-holding ring is a spiral ring, Chen discloses in figure 4 what appears to be a conventional spiral key ring (12). Also, Jung discloses what appears to be a conventional spiral key ring (15) (fig. 1), and Chen's disclosure of a key holding ring (col. 3, 11. 19-20; figs. 1, 2) would have led one of ordinary skill in the art, through no more than ordinary creativity, to use as the ring any known key holding ring such as the apparently-conventional spiral ring disclosed by Jung.

(10) Response to Argument

3. Appellant's arguments presented in the Appeal Brief of 11/25/08 have been fully considered but they are not persuasive. As set forth in the Board decision of 5/5/08, the Chen, Jung, Momemers and Miller patents teach the claimed key holder.

In response to appellant's arguments set forth on pages 10-11 of the brief, that the prior art of record fails to teach a D-ring, the examiner respectfully submits that while Chen and Jung do not teach the D-shaped ring as claimed (Chen's being C-shaped and

Jung's triangularly shaped), Momemers clearly does teach a D-shaped loop or ring (3). Although Momemers's loop 3 is a key-retaining loop rather than a connecting member (abstract), one of ordinary skill in the art would have appreciated that the gap in Momemers's loop that is suitable for receiving keys (col. 3, 1.42) also would be suitable for receiving a key ring. As stated by the Supreme Court in *KSR*, 127 S.Ct. at 1740, "if a technique has been used to improve one device, and a person of ordinary skill in the art would recognize that it would improve similar devices in the same way, using the technique is obvious unless its actual application is beyond his or her skill." Furthermore, as discussed in the rejection above, while Jung's connecting member 14 is not D-shaped, Jung does not set forth any significance of the shape of connecting member 14, other than indicating that it must have a bar comprising inwardly extending prongs with a gap therebetween for attaching connecting member 14 to clipper container 11 (figs. 1, 3). Hence, one of ordinary skill in the art would have been led, through no more than ordinary creativity, to use other shapes that provide inwardly extending prongs, such as Momemers's D-shaped loop 3 (fig. 1).

The Appellant questions the desirability of combining the references to arrive at the claimed invention (Brief, page 11).

As stated by the Supreme Court in *KSR Int'l Co. v. Teleflex Inc.*, 127 S.Ct. 1727, 1740-41 :

Often, it will be necessary for a court to look to interrelated teachings of multiple patents; the effects of demands known to the design community or

present in the marketplace; and the background knowledge possessed by a person having ordinary skill in the art, all in order to determine whether there was an apparent reason to combine the known elements in the fashion claimed by the patent at issue.

To reiterate, Chen's key holding elements 12 and 14 are attached directly to straps 16 and 18 without an intervening ring (figs. 1, 2). However, Jung's disclosure of connecting member 14 (col. 2, 11. 45-47) would have led one of ordinary skill in the art, through no more than ordinary creativity, to use an intervening ring in Chen's key holder to provide the readily apparent benefits of rendering the key holding element attachment releasable and permitting multiple key holding elements to be attached to each strap. *See KSR*, 127 S.Ct. at 1741 (In making the obviousness determination one "can take account of the inferences and creative steps that a person of ordinary skill in the art would employ"). Jung's connecting member 14 is not D-shaped. However, Jung does not set forth any significance of the shape of connecting member 14, other than indicating that it must have a bar comprising inwardly extending prongs with a gap therebetween for attaching connecting member 14 to clipper container 11 (figs. 1, 3). Hence, one of ordinary skill in the art would have been led, through no more than ordinary creativity, to use other shapes that provide inwardly extending prongs, such as Momemers's D-shaped loop 3 (fig. 1). Although Momemers's loop 3 is a key-retaining loop rather than a connecting member (abstract), one of ordinary skill in the art would have appreciated that the gap in Momemers's loop that is suitable for

receiving keys (col. 3, 1.42) also would be suitable for receiving a key ring. As stated by the Supreme Court in *KSR*, 127 S.Ct. at 1740, "if a technique has been used to improve one device, and a person of ordinary skill in the art would recognize that it would improve similar devices in the same way, using the technique is obvious unless its actual application is beyond his or her skill."

In response to appellant's remarks set forth on page 13 of the brief, regarding the rejection of claims 2 and 4 further in view of Miller, it is noted that appellant has not argued these rejections separately, thus no rebuttal is deemed necessary.

Accordingly, it is maintained that the prior art of record is properly combinable and teaches the structure and method of the instant claimed invention.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Suzanne Dino Barrett/

Primary Examiner, Art Unit 3673

Conferees:

Peter M. Cuomo /pmc/

/Marc Jimenez/

TQAS TC 3600